DOCUMENT RESUME

ED 203 764 HE 014 017

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TITLE Legal Considerations in Cooperative Education Administration.
INSTITUTION Detroit Univ., Mich.
SPONS AGENCY Department of Education, Washington, D.C.
PUB DATE Dec 80
NOTE 24p.
AVAILABLE FROM University of Detroit, Detroit, MI 48221.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS College Students; Compensation (Remuneration); Compliance (Legal); *Cooperative Education; Federal Legislation; *Federal Regulation; Foreign Students; Higher Education; *Labor Legislation; Laws; *Legal Responsibility; Personnel Selection; Program Administration; Salaries; State Legislation; *Student Employment; Workers Compensation

ABSTRACT

The laws, regulations, and rulings that are common to all cooperative education programs and that frequently present problems to coordinators, faculty, administrators, and employers are briefly explained. The objective is to provide coordinators of cooperative programs in education, business, industry, and government with a discussion of the current interpretation of these laws by the various government agencies involved. Contents are as follows: Uniform Guidelines on Employee Selection Procedure, unpaid cooperative assignments, unemployment compensation, discrimination against aliens, workmen's compensation, social security benefits, employment of foreign students, V.A. benefits, and reciprocity for motor vehicles licenses. The federal government and the courts have both defined the college placement function as an employment agency or service within the Title VII definition. The fundamental principle underlying the employee selection guidelines is that employer policies or procedures that have an adverse impact on employment opportunities of any race, sex, or ethnic group are illegal under Title VII unless justified by business necessity. The guidelines adopt a rule of thumb known as the "80 percent rule" for determining adverse impact for use in enforcement proceedings. The guidelines apply to selection procedures that are used as a basis for any employment decision, including referral. Unpaid cooperative assignments are covered either by the Fair Labor Standards Act, state statutes, or federal Department of Labor regulations. Some cases have to be handled on an individual basis. Cooperative students are not eligible for unemployment compensation but in most states are covered by the employer's workmen's compensation for injuries. (SW)

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LEGAL CONSIDERATIONS
IN
COOPERATIVE EDUCATION ADMINISTRATION

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University of Detroit
Detroit, Michigan
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HE014 017

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December, 1980

INTRODUCTION

Presented in this booklet are brief explanations of laws, regulations and rulings which are common to all Cooperative Education Programs and which frequently present problems to coordinators, faculty, administrators, and employers. It is primarily intended to provide coordinators of Cooperative Programs in education, business, industry, and government with a discussion of the current interpretation of these laws by the various government agencies involved. Many of the laws fall within what is commonly called "the employment business," and anything that affects employment generally affects the administration of Cooperative Education. Familiarity with these laws, and with the frequent changes in their interpretation and application, is the responsibility of the Cooperative Education Coordinator.

A word of warning! Although it is unlikely that many government agencies will take action, other than a warning, against a Cooperative Education Department for violation of these laws and regulations, students may take action by suing a coordinator and/or an institution for an alleged violation of the students' rights under these laws. In addition, an employer may be sued because of circumstances which might have been avoided if the coordinator had been aware of the employer's responsibilities. In some states, exhaustion of remedies through an agency, such as the Civil Rights Commission, of an alleged violation by a coordinator and/or institution gives the right to the person who made the complaint to file a lawsuit against the coordinator and/or the institution.

Evidence of the growing proliferation of lawsuits was in a recent newspaper article describing the malpractice insurance that some religious denominations have bought to protect their clergy. Actions have been brought against priests, ministers, and rabbis for "bum advice" given in either personal counseling or in pulpit sermons. This makes the statement that "anyone can sue anyone for anything for any amount" seem reasonable. It is the cost of the defense of these legal actions that most people cannot afford.

This booklet does not include many of the legal obligations, such as the Family Educational Rights and Privacy Act, in which a Cooperative Education Office might be involved. When circumstances arise, you should consult your institutional regulations and policies and appropriate legal counsel.

Donald C. Hunt
December, 1980

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UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURE

The Guidelines, which became effective September 25, 1978, were jointly developed by the Equal Employment Opportunity Commission, Department of Labor, Department of Justice, and the Civil Service Commission (now Office of Personnel Management). The Guidelines are based primarily on the numerous opinions given in decisions of the Supreme Court and the lower courts arising from Title VII of the Civil Rights Act of 1964, as amended.

The Guidelines define "Selection Procedure" as "Any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs or probationary periods, and physical, educational, and work experience requirements through information or casual interviews and unscored application forms, whether administered by the employer or by an employment agency."

Under this definition, if an employer were to request that its signups be limited by any factors, such as degree level, major field, GPA, or any other similar educational requirement, the employer might have to attest to the lack of adverse impact of the criteria on any sex, race, or ethnic group. Where there is an adverse impact, the employer would have to validate the criteria based on the entry-level job in which an applicant might be placed.

Further, Section 10 of the Guidelines states "An employment agency, including private employment agencies and state employment agencies which agrees to a request by an employer or labor organization to devise and utilize a selection procedure, should follow the standards in these guidelines for determining adverse impact. . . . .Where an employment agency or service is requested to administer a selection program which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should maintain and have available evidence of the impact of the selection and referral procedures which it administers." Title VII states, "Employment agency means any person regularly undertaking, with or without compensation, to procure employees for an employer, or to procure for employees opportunities to work for an employer, and including an agent of such persons."

Since the federal government and the courts have both defined the college placement function as an employment agency or service within the Title VII definition, Career Planning and Placement Offices would

be included under Section 10 of the Guidelines. As Cooperative Education Offices are essentially placement offices within the intent of the Guidelines and Title VII, inquiry was made regarding the possibility of obtaining an exclusion from the Guidelines for counseling and referral of Cooperative Education students.

In a letter to Dr. John H. Sherrill, University of West Florida, on November 20, 1979, A. Diane Graham, Assistant Director for Affirmative Employment Programs, Office of Personnel Management, gave the following opinion:

> "I have discussed this matter at length with the drafters of the Uniform Guidelines. We concluded that co-op education counseling and referral are selection processes within the meaning of the Guidelines, since they are used by colleges to enroll students in the program. The Guidelines also apply to training where training leads to higher level positions. Moreover, it appears that a student's participation in the program is a mode of employment which falls within the broad definition of employment set forth within the Guidelines. Accordingly, it appears that *an exclusion is unobtainable.*"

The fundamental principle underlying the Guidelines is that employer policies or procedures which have an *adverse impact* on employment opportunities of any race, sex, or ethnic group are illegal under Title VII unless justified by business necessity. The Guidelines adopt a "rule of thumb" known as the "80 percent rule" for determining adverse impact for use in enforcement proceedings. Following is an example of the application of the rule:

APPLICANTS				HIRES
80 White				48 White
40 Black				12 Black
120 Total				60 Total
Black Hires	=	12/40	=	30%
White Hires	=	48/80	=	60%
$\frac{\%\text{ Black Hires}}{\%\text{ White Hires}}$	=	$\frac{30}{60}$	=	0.5

When this ratio is less than 0.8 "adverse impact" is considered to exist in the selection process.

This is not a legal definition of discrimination nor can it be applied automatically, but rather it is a practical device for use by enforcing agencies, and as a guideline for employers.

If the overall selection process for a particular job category does not show an adverse impact based on an 80 percent analysis, then the employer does not need to look at each component of the process, such as the interview, GPA, major field, etc., for an adverse impact. The employer can rely on this "bottom line" concept to show that the particular overall process is satisfactory.

However, if the "bottom line" shows an adverse impact, the employer must analyze each component of the selection process to determine which criteria produced the adverse impact. Then the employer must either validate the criteria or eliminate it from the selection process.

Normally most employers specify certain disciplines, majors and other criteria as prerequisites to interviewing and rely upon Cooperative Education offices to limit interview scheduling or referrals based upon these criteria. Many Cooperative Offices have, in the past, accommodated employers by reviewing and eliminating the names of those interested students who did not satisfy the criteria specified by the employer. The application of some of these criteria may have had an adverse impact upon the referral of minorities and women.

The Guidelines apply to selection procedures which are used as a basis for any employment decision, including referral. Cooperative Education offices are specifically covered as "users" under the Guidelines if they select some individuals for referral to an employer and reject others, and are thus required to validate any selection procedure having an adverse impact. (A "user" is defined as someone who uses a selection criteria in making an employment decision.)

By screening to eliminate names of interested candidates who do not satisfy employer specified criteria, Cooperative Offices are, in effect, selecting some candidates for referral and rejecting others. If the criteria on which this selection process is based result in adverse impact, the Cooperative Office must either **validate** the criteria or eliminate the adverse impact.

Conversely, if the office's referral system involves no selection/rejection process or, if such process has no adverse impact, the validation requirements of the Guidelines are not applicable. Thus, an office could elicit from students signing up for interviews the types of information in which an employer has demonstrated an interest, e.g. grade point averages, majors, disciplines, etc., refer all interested students, and leave

any further screening to the employer. In this manner, the office could, without becoming involved in applying the criteria specified by the employer, provide the employer with the information required to determine which of the interested candidates referred meet its needs.

These same principles would also apply to the advance referral of "qualified" candidates to an employer engaging in affirmative action where the "qualification" specified by the employer is applied by the Cooperative Office in compiling its referral list and results in adverse impact. However, if a Cooperative Office does not apply the employer's criteria in making its referral, but merely refers all candidates available for recruitment, it will not have engaged in the selection/rejection process which triggers the application of the Selection Guidelines.

As an added note on discrimination and the application of Affirmative Action Programs by employers, consider the following example of a somewhat normal request. In general, under E.E.O.C. regulations and/or Supreme Court Decisions as part of an employer's affirmative action, an employer may legally request blacks on an interview or referral schedule. On the other hand, if the Cooperative Education Office complies with this request, the University may be in violation of Title VI or Title IX of the Civil Rights Act of 1964 and/or Supreme Court decisions.

All of these likely occurrences may appear to be rather restrictive and in many instances very restrictive in the administration of a Cooperative Education Program. However, there is no need to panic. Rather, there is a need for Cooperative Education Coordinators to have a general understanding of what the law is, to know when it applies to specific circumstances, and to determine what action is necessary in order to avoid conflict with the law. It is also important for employers to understand the limits that face Cooperative Education offices in order to promote better understanding of the positions of both the employer and institution within the Guidelines and Title VII. Developing this understanding is the obligation of the coordinator.

A copy of the Uniform Guidelines on Employee Selection Procedures can be obtained by writing to the Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington DC 20037. In addition, the Guidelines were published in the Federal Register on August 25 1978, Part IV, and in Vol. 29, Code of Federal Regulations, Part 1607.

UNPAID COOPERATIVE ASSIGNMENTS

The Fair Labor Standards Act contains provisions and standards concerning recordkeeping, minimum wages, overtime pay, child labor, and equal pay. These basic requirements apply to employees engaged in interstate commerce or in the production of goods for interstate commerce and also to employees in certain enterprises which are so engaged. There is no special provision in the Act which precludes an employee-employer relationship between a religious, charitable, or nonprofit organization and persons who perform work for such an organization. Questions arise regarding the existence of an employee-employer relationship and the application of minimum-wage regulations when Cooperative students, interns, and others are away from the campus on uncompensated work assignments.

The Department of Labor published "Employment Relationships Under The Fair Labor Standards Act" in February 1973, (WH 1297 REV.) in which trainees were distinguished from employees as follows:

> "The Supreme Court has held that the words "to suffer or permit to work", as used in the Act to define "employ", do not make all persons employees who, without any express or implied compensation agreement, may work for their own advantage on the premises of another. Whether trainees or students are employees of an employer under the Act will depend upon all of the circumstances surrounding their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the meaning of the Act:
>
> (1) the training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
> (2) the training is for the benefit of the trainees or students;
> (3) the trainees or students do not displace regular employees, but work under their close observation;
> (4) the employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his operations may actually be impeded.
> (5) the trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

(6) the employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training."

While most of these criteria impose no problems, Criterion 4 would appear to limit the training to observer type situations which is not the pattern of most Cooperative Training Assignments.

In general, para-medical students are excluded from this requirement when the experience is required to become licensed to practice under state regulations such as R.N., L.P.N., X-Ray technicians, lab technicians, medical interns, etc. Pharmacy students are also excluded in their "externship" courses with either the hospital pharmacy or the community pharmacy. Hospital Administration residents are probably excluded, but there is a pending court decision covering this. Teacher-candidates doing student teaching, graduate assistants in teaching and research, and other similar educational functions are excluded by separate regulations.

Other cases would be handled on an individual basis and are decided on the particular circumstance. For example, a communication major is working in a local A B C affiliate TV station as an unpaid intern. The Department of Labor would probably do nothing if the student was doing the same work that the student might be doing on the campus in a "laboratory simulation". The Department of Labor is concerned with situations where the employer would be using the student on a regular and somewhat permanent basis to perform a basic and required function that normally would require a paid employee working on a part-time or full-time schedule.

The Department of Labor normally does not "police" business, industry, and government to uncover minimum wage violations, but only investigates on the complaint of an individual. If there is a normal practice of using interns to provide an opportunity for the interns to acquire the laboratory knowledge necessary to the practice of the profession, the Department would generally not take any action.

Those cases not covered by the Fair Labor Standards Act are usually covered by state statutes which specify minimum wages for employees, and the regulations are essentially the same as the Federal regulations. The action of the several states is unpredictable, but it is assumed that the states are not policing the statutes and would only act on a complaint of an individual. However, even if the Department of Labor does not take any action on the complaint of a student, the student can bring a lawsuit under the Fair Labor Standards Act against the employer for minimum wages and punitive damages.

UNEMPLOYMENT COMPENSATION

Unemployment Compensation was established in 1937 and is presently administered under the Federal Unemployment Tax Act of 1970 (F.U.T.A.), as amended, and the employment security acts of the several states. The program is administered by each state and varies accoroing to the amendments adopted by each state.

Under "Exclusions from Employment" the Federal Act excludes Cooperative students *up to the age of 22* with the following paragraph, which is also in all the state acts:

> "Service performed by an individual under the age of 22 who is enrolled, at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer. This subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers."

In *Michigan* an additional paragraph has been included under "Exclusion from Employment" which excludes Cooperative students *at any age* as follows:

> "Service performed by a college student of any age, but only when the student's employment is a formal and accredited part of the regular curriculum of his school."

Several states are currently considering an amendment similar to the Michigan amendment, but at this time none has been enacted.

As Cooperative students are "excluded from employment" under the F.U.T.A., employers do not have to pay the Federal or the State unemployment tax on the students' wages. Currently the Federal tax is 3.2% of the first $6,000 of annual earnings plus any added amount required by the state. Yet, many employers have failed to take advantage of this tax savings. One major employer has estimated the savings at over $2,000,000 in the next five years.

In addition many Cooperative students illegally collect unemployment compensation because, apparently, the personnel offices of the employers are not aware that Cooperative students are not eligible. The employer cannot rely on the state unemployment office denying the student claim, particularly when the employer is improperly paying the unemployment tax on the student's earnings.

In Alabama, the form on pages 11 and 12 is used to certify that a Cooperative student's wages are exempt from unemployment tax in accordance with the above section of the F.U.T.A.

Coordinators of Cooperative Education Programs should make sure that the employers of their Cooperative students are completely aware that most Cooperative students are not eligible for unemployment compensation and that the employer does not have to pay unemployment tax.

CERTIFICATE OF PARTICIPATION IN THE COOPERATIVE EDUCATION PROGRAM FOR EXEMPTION OF UNEMPLOYMENT COMPENSATION STATE OF ALABAMA

TO: _____ STUDENT NAME _____

_____ S. S. NUMBER _____

_____ DATE OF BIRTH _____

Name and Address of Employer — Name, S. S. No., & Age of Student

This is to certify that the above named student is enrolled at the institution named below and is employed by the above named employer in connection with a work-study program which combines academic instruction with work experience.

This academic instruction program meets with the requirements set out in Section 25-4-10 (b) (12) Code of Alabama 1975, as amended, (see below) for exemption from Unemployment Tax of the wages paid this student in connection with this program. So long as the service performed by this student is in connection with this academic program, wages paid for this service should not be reported for unemployment tax purposes and are not subject to Unemployment Tax.

_____ to _____

_____ Academic Year

_____

_____

Name of Educational Institution

BY _____ (Title) _____ Date _____

(Section 25-4-10 (b) (12), Code of Alabama 1975 – "Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except this paragraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.")

Instructions to Institutions:

This form should be completed and supplied to the employer on each student if the following criteria are met:

1. The student/participant must be under 22 years of age;
2. He must be enrolled at an educational institution as a student in a full time program;
3. The academic portion of the program must be taken for credit at the institution where he is in attendance;
4. The educational institution must be a non-profit or public (not a private-for-profit) institution and must have regular faculty, curriculum, and a regularly organized body of students at the place where the educational activities are performed. The exclusion would not apply to a correspondence school, etc., or a for-profit institution;
5. The combining of academic study with work-experience must be an integral part of the program;
6. The work-experience portion must be related to the academic source of study;
7. The participant must receive credit for the academic portion, and;
8. The educational institution must have certified that the student is a participant in such a program.

Instructions to Co-op Employers:

Co-op students may be excluded from the Unemployment Compensation Tax if the above criteria is met and certified by the educational institution. This certification should be retained on file by the employer for examination by representatives of the Alabama Department of Industrial Relations or the U.S. Internal Revenue Service. If the employer fails to produce this certificate upon request, wages paid to the participant/employee can become taxable.

DISCRIMINATION AGAINST ALIENS

The legality of requiring United States citizenship for employment remains questionable regardless of Supreme Court and District Court rulings. Charges of discrimination against employers or employment agencies, including Cooperative Education Offices, are generally brought under two Federal Statutes, Title VII of the Civil Rights Act of 1964 and Section I of the Civil Rights Act of 1866. In addition, claims are often filed under state statutes which are substantially identical to Title VII. The basis of these discrimination claims is frequently that the action of the employers had the effect of discriminating on the basis of the national origin which is prohibited by Title VII. By requiring United States citizenship the employer is discriminating against all other national origins.

In 1975 the Director of Cooperative Education of the University of Detroit was sued by a Pakistani citizen, who had "permanent resident" status in the United States, for alleged discrimination on the basis of national origin. The office had refused to let him interview with three companies which had specified "citizens only" in their requirements. Because of the rulings of the District Courts the University settled the claim "out of court" on the advice of legal counsel. The Pakistani had first filed a complaint with the Michigan Civil Rights Commission, and, after the Commission found no basis for the complaint, he started the lawsuit.

The University's legal counsel gave the following advice to the Cooperative Education Office:

> "Because of this 5th Circuit decision, we have no alternative but to advise you that any participation in acts of discrimination against non U.S. citizens by your placement service may be held to be in violation of the law. Only in situations where a Federal statute requires an employer such as a military service to hire only U.S. citizens do we feel that you can safely cooperate with an employer's request to screen aliens from placement center interviews.
>
> "In view of the burgeoning volume of civil rights litigation, most employers are extremely sensitive about their exposure, and would probably be willing to stop requesting that only citizens be interviewed, once it was explained to them that such a procedure may place them as well as the University in violations of the law."

The College Placement Council has advised its employer members to avoid the use of "citizens only" requirements in order to escape possible liability for citizenship discrimination in employment.

WORKMEN'S COMPENSATION

Workmen's compensation laws have been enacted in all the states to provide specific amounts of recovery by employees for injuries arising out of or in the course of employment. This underlying principle of workmen's compensation is common to all states, but the amounts of payment, methods of payment, types of injury covered, options open to employees, and restrictions on both employees and employers vary considerably under the statutes of the several states.

Workmen's compensation is dependent on the existence of an employee-employer relationship for coverage under the statutes. If a person is paid for performing useful work, as is the case of most Cooperative Education students, the person is generally considered an employee. In addition there have been cases where the person was not paid for the services provided, but an employer-employee relationship was deemed to exist and the individual came under the statute.

An employee who sustains a work related injury, regardless of the cause of the injury, can recover medical costs and lost earnings within the limits set by the statute but not punitive damages or payments for pain and suffering. The employee can receive this compensation regardless of whether the injury resulted from negligence on the part of the employer or as a result of the employee's own act.

Workmen's compensation payments are covered by private insurance underwriting in some states and by state agency insurance pools in others. The insurance protects the employee and at the same time limits the liability of the employer by maximum payments established in the statutes. If employees are protected by workmen's compensation, generally they cannot sue the employer for negligence in the civil courts.

Therefore, it would appear that responsibility for the injury of student employees on Cooperative Education Training assignments would be covered by the employer's workmen's compensation under the statute of the state where the student is employed.

However, recent statutes in Oregon and Colorado seem to shift this responsibility for providing workmen's compensation insurance from the employer to the institution where the Cooperative Education student is enrolled. The Oregon statute is restrictive and apparently covers only Vocational-Tech students, but the Colorado statute covers all Cooperative students. The payment of workmen's compensation premiums by educational institutions for students who work as part of the educational programs is mandated by the Colorado statute. According to the Legal Counsel for the State Division of the Colorado State Compensation Insurance Fund, employers of Cooperative students do not have to pay

insurance premiums on students since the school is paying the premium.

On September 10, 1980, Dean Donald C. Hunt of the University of Detroit, wrote to the Legal Counsel (in Colorado) asking, "How does this statute apply to institutions outside Colorado, like the University of Detroit which have Cooperative Education students working for companies in Colorado, like IBM?" On September 17, the Legal Counsel replied,

> "Since you are not an insured of the Colorado State Compensation Fund and since I am Chief Legal Counsel for the State Compensation Fund, I hesitate to give you legal advice. Therefore, I am referring your letter for an opinion to the Director of the Colorado Division of Labor. The Colorado Division of Labor is the entity in Colorado that administers the Workmen's Compensation Act."

As of December 18, 1980, no reply has been received from the Colorado Division of Labor.

In addition, Hunt wrote to IBM in Boulder, Colorado, regarding workmen's compensation insurance for Cooperative students and received the following reply:

> "The IBM Corporation withholds workmen's compensation tax on taxable wages for all employees including the employees so described as cooperative students. The exception to this if, when hired, the cooperative students notify payroll that a workman's compensation tax is made at their school, then IBM would not tax those wages.
>
> "We are not currently aware of any student who is considered as non taxable for workman's compensation."

Inasmuch as the responsibility for payment for compensation insurance on Cooperative Education students from institutions outside of Colorado is not clear within the Colorado statute, it would seem advisable not to send Cooperative students to employers in Colorado in order to avoid possible institutional liabilities.

As this type of legislation is an active political issue in most states, there may be a tendency to expand this type of thinking in workmen's compensation statutes in other states. Therefore, coordinators and institutions should carefully follow any attempted changes of the statutes in their respective states. The Colorado statute appears to have caught the Cooperative Education Coordinators in Colorado by surprise, and they are now attempting to repeal the statute. Because of the scheduling of the Colorado legislature, the earliest any repeal could be enacted is 1982.

SOCIAL SECURITY BENEFITS

Dependent children of disabled, deceased, or retired parents may receive benefits under the Social Security Act. Full time students, who are otherwise eligible for these benefits, may receive the benefits until they reach the age of 22. The child's monthly benefit is one-half the insured parent's primary insurance amount if the parent is entitled to disability or retirement insurance benefits. If the insured parent is dead, the monthly benefit rate is three-fourths of the parent's primary insurance amount. However, the benefit paid to a child may be less, if the "family maximum" applies, and the benefit must be proportionately reduced.

The child's insurance benefits may not be payable or may be payable in part if the child works and earns over the exempt amount. The exempt amounts are $5,000 for the calendar year of 1980, $5,500 for 1981 and $6,000 for 1982. The excess earnings are the amounts which are deducted from the monthly benefits and are equal to one-half the amount the beneficiary's earnings exceed the exempt amounts. For example, if a student earns $7,000 in 1980, the excess earnings would be $2,000 and the benefits would be reduced by $1,000.

Cooperative Education students receiving Social Security Benefits must continually watch their earnings and the benefits they are receiving. If the student in the above example was in school for the first two quarters of 1980 and at work on a cooperative assignment during the third and fourth quarters, the student would have to return $1,000, if the student did not notify the Social Security office when his earnings reached $5,000.

It is suggested that coordinators advise students receiving Social Security Benefits of these regulations in order to minimize their financial problems.

EMPLOYMENT OF FOREIGN STUDENTS

Over the years the question of whether or not foreign students (students with F-1 visas) are eligible to participate in Cooperative Education programs has produced almost as many opinions as there are District Offices of the Immigration and Naturalization Service. The controlling instrument is the Immigration Service Form I-538, Application by Nonimmigrant Student (F-1) for Permission to Accept Employment or Practical Training. Following are the specific regulations from the instructions on the application:

Paragraph F-a, Eligibility

A nonimmigrant student is not permitted to work for a wage or salary or to engage in a business while in the United States unless permission to do so has first been granted by the Immigration and Naturalization Service.

Paragraph C, Practical Training

(1) Not more than sixty days prior to and not later than thirty days after completion of studies or graduation, you may request permission to accept or continue employment in order to obtain practical training in your field of study. Such *application may be made* more than sixty days prior to completion only if you are *attending a college*, university or seminary *which certifies that it requires practical training for all degree candidates in a specified professional field,* and that *you are a candidate for a degree in that field.* An authorized school official must certify in Part IV of this form that the employment is recommended for practical training in your field of study. That official must also certify that he/she believes that practical training is not available to you in your country of foreign residence.

(2) . . . . . .

(3) *Students enrolled in a college*, university, or seminary *having alternate work-study courses as part of its regular prescribed curriculum may participate in such courses without* change of status and without *filing an application* for permission to accept employment, provided such periods of actual employment shall be considered as practical training. The *work must be in a field related to your course of study.* For students who have engaged

in off-campus work-study programs, a letter from the school *must be submitted with the application* stating the number of hours the student has participated in off-campus employment, a description of the duties, and the name and address of the employer.

These regulations present some confusing circumstances. In C-1 it appears that students in a mandatory Cooperative Program would qualify for permission to work, but in C-3 the restriction of "work must be in a field related to your course of study" could be limiting for some arts and business students. In addition, it is not clear whether or not the "definition" in C-3 refers to a mandatory program. Regardless of what it means, it clearly states that the students "may participate in such courses -- without filing an application" whereas C-1 implies that an application must be filed. In addition, later in C-3 there is reference to "the application".

Inasmuch as the regulations are not clear, the Instructions Officer at the Immigration and Naturalization headquarters in Washington implied that it was not practical to have foreign students in Cooperative Education Programs regardless of the circumstances. He practically ruled out any cooperative work situation for students in the Humanities and in General Business and took a dim view of students in Science and Engineering, even if the program was mandatory as described in C-1 or C-3.

On the other hand, it was the opinion of a District Officer that an application should be filed, and, if approved, either a notation would be made on the student's Form I-94, or a letter would be issued which would authorize a student to be employed on a Cooperative Education assignment. (Form I-94 is the card which the foreign student must carry with him at all times.) This would give the foreign student the security of a verification of his authorization to work which he would not have if he did not file the application.

In addition, the District Office pointed out the restrictive clause in C-3, and that the Immigration Service would take a much narrower point of view as to what was related to the course of study than would an institution. This limitation would eliminate many liberal arts programs which are career related, but not course related.

Based on many years of experience with foreign students in Cooperative Education, it is the opinion of the writer that Cooperative Programs for F-1 visa students should be avoided in all academic disciplines. It is more practical for foreign students to complete their academic program and then take advantage of the year of training in the United States that is permitted by Immigration regulations.

V. A. BENEFITS

Veterans wishing to combine academic training and practical work experience can receive full-time educational benefits for the work experience as well as for enrollment in academic courses, when the courses and work experience are formally a part of a Cooperative course recognized by the school the veteran is attending.

The state approval agency, having jurisdiction over the enrolling school, must give its approval to the Cooperative course, before veterans education benefits can be paid to a veteran in the role of a Cooperative student. While the Veterans Administration does not participate in the decision-making process, its regulations suggest some of the questions the state approval agency will ask before granting approval to a Cooperative Program.

- Is the alternate in-school (institutional phase) period at least as long as the alternate period (work phase), in the business or industrial establishment?
- Has the program for which approval is sought been promoted as a Cooperative Program in the school catalogue or other literature of the school?
- Has the school insured that employment during the alternate periods will be available to Cooperative students and that the employment will be supervised as to content?
- Will completion of the on-the-job (alternate phase) portion of the program result in a determination by the school that the student has completed a part of the required work for a degree or diploma?

The work experience phase of each program must be viewed as supplementary to the in-school portion of the course and must bear a real and substantial relation to the academic courses being pursued by the student.

Every veteran participating in a state approved Cooperative Education Program has the option of either accepting payment at the cooperative rate for both the work and institutional phases or receiving payment at the regular veterans rate, but only for the in-school periods. Once a veteran is certified as a Cooperative student, he can begin with the institutional phase or the work phase, but he must complete both phases before again having the right to elect how future benefits will be paid.

MONTHLY EDUCATIONAL RATES

(Effective 1-1-81)

REGULAR RATE		COOPERATIVE RATE
$ 342	single	$ 276
$ 407	one dependent	$ 323
$ 464	two dependents	$ 367
+ $ 29	each additional	+ $ 21

In order to determine whether there is an advantage in receiving cooperative rate benefits, one must ask in each individual case, what is the immediate financial need of the veteran? The principle advantage of the cooperative rate is that it is continuous. If the veteran requires a continuous payment during the work and institutional phases, then the cooperative rate should be used.

The amount of entitlement to the Veteran Administration educational benefits accrued by a veteran must also be considered when evaluating the merits of cooperative rate benefits. Veterans who served on active duty for more than 180 continuous days (or were released with a service connected disability), any part of which occurred after January 31, 1955 but before January 1, 1977, accrued entitlement at the rate of 1-1/2 months per month of active duty. When the veteran served 18 months, benefits were fixed at a maximum 45 months. However, all veterans must use their benefits within 10 years of the day they are released from active duty.

The number of months entitlement a veteran has remaining and the amount of time remaining in which to use this entitlement becomes very important in deciding whether to use cooperative rate benefits or not. If a veteran's ten years time limit is running out, continuous payments through the cooperative rate may be best. If the veteran has a limited amount of entitlement remaining but years in which to use it, then the regular institutional rate may be of greater value to the veteran. Ultimately, the veteran's final decision on which benefit to use will be based on a mixture of personal need and maximum use of his or her remaining benefits.

Veterans who enlisted after January 1, 1977 should contact the nearest V. A. office for information on their educational benefits.

RECIPROCITY FOR MOTOR VEHICLE LICENSES

In 1968 the Cooperative Education Association presented a copy of a resolution to the American Association of Motor Vehicle Administrators asking the latter Association to waive any requirements requiring re-registration of a motor vehicle, obtaining a local driver's license, and local insurance, when the student crosses state lines for cooperative work provided these items had been properly taken care of in the student's home state or the state in which the student attends college.

The American Association of Motor Vehicle Administrators adopted the resolution, with some modification. Today the Cooperative Education Association will supply educational institutions with copies of this resolution in folder form. Cooperative Education students are requested to carry a copy of the folder whenever operating a motor vehicle in a state other than the one where they obtained a valid registration, driver's license, or motor vehicle insurance.

Most states honor this resolution – but not all. The copy carried should be presented to the traffic officer whenever the student is stopped, and before being ticketed, and if the officer does not honor the resolution, then it should be presented to the court. In the event the student is not granted relief, the Cooperative Education Association should be notified via the student's Cooperative Education Program administrator.

For single copies of the resolution write:

Cooperative Education Association
247 Alumni Center
Indiana State University
Terre Haute, IN 47809